

STATE OF NORTH DAKOTA



**DEPARTMENT OF COMMERCE
National Telecommunications and Information Administration
and the
DEPARTMENT OF AGRICULTURE
Rural Utilities Service**

***Comments Regarding*
Docket No. 090309298–9299–01
American Recovery and Reinvestment
Act of 2009 Broadband Initiatives
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Executive Summary

The State of North Dakota submits the following comments pursuant to the American Recovery and Reinvestment Act of 2009 broadband grant and loan programs, Docket No. 090309298-9229-01

As one of the most rural States in the Union, North Dakota has experienced the best and worst of communications services. We are proud that we have high quality telephone service and in many areas, quality DSL and cable modem service. However, like many other rural states, we have many “dead zones” where mobile phone service is not available, and from past experience, we typically are among the last to receive build out for advanced services by the national carriers. We believe the new broadband grant and loan programs funded under the American Recovery and Reinvestment Act (ARRA) of 2009 are an opportunity for States like North Dakota to expand broadband service and address key community services such as public safety.

BTOP and RUS Grants and Loans. With respect to the broadband ARRA programs, the State of North Dakota may not be a direct applicant. North Dakota would like to have the flexibility to work with the private sector in partnership to find the most efficient way to meet our broadband needs. The state has been successful in the past by coordinating with private entities to provide broadband access to state agencies, political subdivisions, and education. In that regard, we suggest the National Telecommunications and Information Administration (NTIA) and Rural Utilities Service (RUS) allow for any entity to apply for grants and loans under the ARRA. We believe the ARRA statute suggests that States play an important role in these programs, including providing input in how key terms are defined and applied in the programs (e.g., broadband, unserved, and underserved). State supported applications or endorsements should be given considerable weight. In addition, the two agencies should provide some deference to the States with respect to what are considered priorities in their States, and the programs should allow for flexibility in program eligibility and implementation.

To maximize the benefits of broadband deployment, NTIA should ensure that BTOP requirements are designed to facilitate long-term, sustainable broadband competition. In addition, NTIA should carefully balance the grant amounts and number of recipients so that NTIA neither funds too many small projects that result in fragmented service nor concentrates grant money in the hands of so few entities that competition never develops.

I. The Role of the States

The Recovery Act states that NTIA may consult the States with respect to various aspects of the BTOP. The Recovery Act also requires that, to the extent practical, the BTOP award at least one grant to every State.

a. How should the grant program consider State priorities in awarding grants?

North Dakota believes NTIA can foster coordination with State priorities by giving considerable weight to applications filed either in conjunction with States, endorsed by States, or applications that address previously identified priorities of a State. In addition, considerable weight ought to be given to a State in determining projects that address the purposes listed in Section 6001(b) of the American Recovery and Reinvestment Act (ARRA). The agency does not need to allow States to delay the grant processing or surrender its discretion entirely to the States. The ARRA encourages, but does not mandate that NTIA consult with the States on BTOP grants and the criteria for considering eligibility and awarding grants. While the flexibility in the statute permits States to apply directly and to become re-granters, some States may not want to apply directly. North Dakota, for example, may prefer to maintain a coordination role with applications seeking BTOP grants for their State, and we would like the program rules will permit this option.

b. What is the appropriate role for States in selecting projects for funding?

The appropriate role for States is the role of the “validator” with respect to priority projects within their jurisdiction. For example, NTIA should take into account what a State designates as its unmet needs provided those needs are consistent with the statutory criteria. Thus, NTIA's definitions of “unserved” and “underserved” should provide enough flexibility for a State to identify what it considers unserved or underserved, and thus favorably consider applications that meet that need. Further, States should retain broad flexibility in determining which public safety, educational, or health care applications it considers important to the State and should therefore be considered a priority application by the agency. In particular, deference should be given to States in identifying priorities for educational awareness and training;¹ public safety projects;² and projects that stimulate demand and economic growth.³

c. How should NTIA resolve differences among groups or constituencies within a State in establishing priorities for funding?

NTIA should not seek to resolve differences among groups or constituencies within a State in establishing priorities for funding or between competing interests. Rather, the

¹ Section 6001(b)(3)

² Section 6001(b)(4)

³ Section 6001(b)(5)

agency should focus on creating objective scoring criteria that will differentiate applications based on alignment with the goals of the statute. All other things being equal, applications that are submitted either jointly with a State or with the State's endorsement should score higher than applications without such coordination.

d. How should NTIA ensure that projects proposed by States are well executed and produce worthwhile and measurable results?

NTIA should ensure that projects proposed by States are well executed and produce worthwhile and measurable results by judging project viability and effectiveness under the same criteria used to judge all other applications. Ensuring proper execution and effectiveness of grant applications requires clear criteria to which applicants must respond. Post-award follow up should include manageable reporting on progress towards the goals pledged in the application. Post-award reporting requirements need to be manageable for both the applicant and the agency. In evaluating a proposal, the NTIA needs to give special attention to the ability to not just obligate funds, but to complete projects promptly.

II. Eligible Grant Recipients

a. What standard should NTIA apply to determine whether it is in the public interest that entities other than those described in Section 6001 (e)(1)(A) and (B) be eligible for grant awards?

Congress was clear in its legislative language and history that a large number of entities should be eligible for BTOP funding. The private sector is the engine of economic growth and job creation. Making BTOP funds available to private sector entities will facilitate the primary goal of the ARRA which is to retain and create jobs.

In addition, access to existing broadband infrastructure and expanding broadband infrastructure across North Dakota may require a consortium of efforts by private carriers, regional native organizations, local and regional political subdivisions, and the State of North Dakota. It is likely that applicants will be required to utilize both NTIA and RUS funding sources to satisfy the requirements for successful construction as well as long term user commitments to guarantee critical on-going operating and maintenance costs of that infrastructure.

Therefore, NTIA should not discriminate among eligible entities. An application from any eligible entity should be considered on its merits, how it achieves the goals established in the statute, and adheres to the criteria in the statute.

III. Establishing Selection Criteria

The Recovery Act establishes several considerations for awarding grants under the BTOP. The State of North Dakota would recommend the following for establishing grant criteria.

NTIA should limit its scoring criteria to the criteria established in the statute. The agency should consider the criteria specified in Section 6001(b)(3), (4), and (5) and Section 6001(h)(2) as criteria that can distinguish applications. Projects proposed that will serve these criteria should receive favorable points for including such service in the application.

It will be difficult for NTIA to determine where need exists and is not replacing private investment. No objective information exists for the agency to judge against applications.

With respect to BTOP grants for unserved areas, applicants must show their proposal requires federal grant assistance to make the deployment possible. This suggests that NTIA only consider applications for unserved areas that are deploying new infrastructure or facilitating new broadband service that is not otherwise available.

In applications for underserved areas the burden must be on the applicant to show that private investment could not ensure affordable service with respect to the new service that is being proposed in the application.

The agency can ensure long-term feasibility by requiring applicants to demonstrate how the proposed project, if awarded, is part of a sustainable business plan. The agency should avoid overly burdensome capital or equity requirements that the Rural Utilities Service (RUS) has historically imposed on its broadband loan program. In other words, applicants should not be forced to lock up capital in advance of being awarded a grant under BTOP or as a condition of drawing down on a BTOP grant award.

Factors such as determining a **"need for federal funding," "replacement of private investment"** and **"long-term sustainability"** should be given a **"yes"** or **"no"** test. It will become too burdensome on the agency to establish reasonable criteria to make judgments between applicants that meet these criteria better or worse than another applicant.

With respect to grants and loans awarded by the USDA under the ARRA, the two agencies should coordinate and not make certain that an RUS grant or loan does not block a worthy BTOP grant award. For example, it may be logical and desirable for an area to have a BTOP grant to a mobile wireless provider and an RUS grant to fund a wire line broadband provider. If both projects create jobs and both projects create needed infrastructure; the rules or implementation of the statute should not prevent both

technologies from qualifying for funding. If an entity seeks a USDA ARRA broadband loan, a BTOP or USDA grant should not be a barrier to loan eligibility.

Priority should NOT be given to proposals that leverage other Recovery Act projects. Involving other ARRA programs only further complicates the application and evaluation process. Given the level of interest in the ARRA broadband grant and loan programs, and given the urgent need to create jobs, the NTIA and the RUS should simplify the application and evaluation process. Any addition of complexity could seriously impair the each agency's ability to issue grant awards in a timely manner. NTIA should not attempt to condition or score a BTOP application based on decisions of other agencies. The only exception to this is the statutory requirement that NTIA and the RUS coordinate and prevent any double dipping. The NTIA may want to consider how many non-federal sources are triggered because of the BTOP grant. This allows the BTOP to provide additional economic stimulus, similar to the former Technology Opportunities Program (TOP) of the 1990s.

In circumstances when the agency is considering competing applications, the agency should provide greater weight and priority to applications that address several purposes specified in the statute. The agency should establish a cap for the total amount of grant funds that any one entity can receive under BTOP grants. This will ensure diversity among applicants and prevent one or two large entities from dominating the BTOP grant awards.

Applicants should be required to show that their BTOP application is part of a sustainable business plan. The business plan should be judged by realistic standards of take rates and churn appropriate for the given market. These requirements will encourage sustainable adoption of broadband service.

Technological neutrality requires not only that the NTIA avoid establishing definitions for eligibility, minimum broadband speeds, unserved, and underserved that would favor a particular technology, but it also requires that the agency remain mindful that different technologies may provide very distinct broadband service and therefore should not be considered duplicative. For example, the presence of a mobile broadband service meeting the minimum broadband performance required under the BTOP program should not preclude consideration of a BTOP grant application for fixed broadband service in a particular area and vice versa. Mobile broadband and fixed broadband services are very distinct services and will address different needs in a given community. Technological neutrality requires NTIA and the RUS to consider this different technology as not duplicative when considering applications.

All applications for grants should propose affordable service. The agency should not impose a hard and fast rule, but take into consideration various factors affecting the market for which the project is proposed. No one factor should establish the agency's definition of affordability. The agency should take into consideration the full complement of factors, including but not limited to, the price of services in areas where there is a competitive market.

IV. Grant Mechanics

The Recovery Act requires all agencies to distribute funds efficiently and fund projects that would not receive investment otherwise.

Both agencies (NTIA and USDA) should use a competitive grant process for distribution. All eligible entities should be allowed to compete for the grants and loans from both agencies.

Both agencies should adopt a streamlined application process using objective criteria that permits quick review by the agencies and allows for early decision making on the application.

If an application advances to the stage of contract negotiation, the application should only then be required to provide full documentation to the agency regarding engineering, business plans, build-out schedule, proof of legal existence and other documents and attestations typically included in a federal grant application.

A highly focused, streamlined application describing the project, the technology used, and the territory of the project should be scored only against the criteria outlined in the ARRA. Scoring should be done on a national basis. High scoring applications should not be mutually exclusive. It should be possible, for example, for a mobile wireless and a fixed wire line provider to both win grant awards in the same area.

A streamlined, pre-approval process would allow both agencies to make fast determinations of the most feasible applications, while still allowing the agencies to obtain the full complement of information necessary to make a final determination on the application.

V. Broadband Mapping

The Recovery Act directs NTIA to establish a comprehensive nationwide inventory map of existing broadband service capability and availability in the United States that depicts the geographic extent to which broadband service capability is deployed and available from a commercial provider or public provider throughout each State.

The Broadband Map should provide NTIA, federal agencies, States, and other entities with an objective source of information as to where the coverage gaps exist in the country with respect to broadband service. The map should also include a detailed assessment of radio spectrum use for fixed and mobile broadband in licensed spectrum bands. The spectrum assessment should be capable of showing wireless coverage gaps where service is not yet built out in various licensed spectrum bands. The map

should provide sufficiently accurate data that the RUS can rely on it for the purpose of establishing broadband loan eligibility under the 2008 farm bill.

The broadband map should make distinctions between the availability of landline and wireless, including mobile wireless and broadband services. The mapping should assess both broadband availability and broadband adoption. To the extent feasible, the assessment should distinguish between residential and commercial/business availability and adoption. Also, the broadband map should include some detail on the availability of broadband services for public safety agencies and first responders that is provided by commercial providers as well as State or local operated communications systems. Other institutions that serve a community's educational and health care needs should be included in the assessment.

Census Block information should be utilized as the level of geographic information for maps regarding broadband service. The mapping information should be in a format that is easily updated. The information should be updated on a regular basis.

Other factors the NITA should consider to fulfill the requirements of the Broadband Data Improvement Act, Public Law 110-385 (2008) should include:

- 1) Assessing licensed spectrum use for licensed bands for mobile and fixed broadband service. This assessment should be comprehensive and provide enough detail to accurately identify coverage gaps in licensed spectrum.
- 2) Assess the availability and adoption of broadband services - fixed landline as well as mobile wireless broadband - for public safety, health care, and educational entities in each state.

With respect to eligibility for broadband mapping grants, NTIA should consider applications directly from States or from non-government entities that apply either in conjunction with a State or with the endorsement of a State.

As conditions of receiving statewide inventory grants, states should assess mobile and fixed broadband service in licensed spectrum bands and unlicensed providers.

Each State broadband map should include:

- **Broadband coverage.** Baseline mapping information must include broadband coverage by provider, by speed, and by technology.
- **Speed.** Broadband speed in and of itself can be a contentious issue if not addressed with clarity from the very beginning of a broadband deployment initiative. A consistent definition of speed should be maintained across all Federal agencies. Issues that need to be considered in establishing speed standards are the point in time the measurement is taken (midnight vs. the busy hour) and variance between up and down speeds.

- **Wireless Coverage.** The comprehensive nationwide map should include assessment of mobile and fixed wireless services in licensed spectrum bands for both broadband as well as CMRS services.
- **Technologies.** Broadband maps must accommodate all relevant technologies. Broadband deployment initiatives must be technology agnostic to be fair and open to all public policy and commercial interests involved. Therefore, it is important that mapping standards require that all technologies be considered including traditional telecom/wireline, cable, WISP (both WIMAX and WiFi), mobile wireless, broadband over power, fiber to the home, etc.
- **Infrastructure Elements.** Maps must also include all major components of broadband infrastructure (e.g., fiber, towers, etc.). Many times a rural provider will have the capacity to provide broadband 'last mile' access but not have sufficient information on how the middle mile/backhaul can be acquired.
- **Demand and Demographic Data.** This should include not only residential and business locations, but also a host of public sector elements including schools, libraries, medical facilities, government locations, public computer centers, etc. In terms of demographic information the map should address a variety of census demographics (income, age, education levels, etc.) and support a robust understanding of demand side issues.
- **Price.** Retail broadband price is an important component of a broadband map because it has an obvious role in the decisions consumers will make and is a driver in the pace and scale of any resulting growth in demand.
- **USF and current RUS support.** To understand the full economic picture of an area and to optimize the benefits of the ARRA funds, one needs to understand all the various sources of funding available and how those play into the assessment of how impaired an area may be.

IX. Financial Contributions by Grant Applicants

BTOP grant eligibility requirements should be drafted to eliminate match requirements for states and political subdivisions. Grant eligibility language that waives match requirements for building or expanding public safety interoperable communication system access to existing broadband infrastructure is essential to advance critical public safety requirements in rural North Dakota. At a minimum, match requirements should be defined to allow the generous use of in-kind state and political subdivision expenditures.